IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 22503 of 2007(D)

AGAINST THE ORDER IN EP.59/06 IN
OS.1645/2003 of PRL.M.C.,TRIVANDRUM

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PETITIONER:

K.S. GANESH KUMAR,S/O. P. AMBIKA,
TC 28/956,FORT PO,
THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENT:

STATE BANK OF TRAVANCORE,
KAITHAMUKKU BRANCH,
THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P(C) No.22503 OF 2007

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Dated this the 23rd day of July, 2007

JUDGMENT

This writ petition is filed to set aside Exts.P4 and P6 orders. It is the case of the petitioner that in the execution application he has raised a contention of no means and PW1 was examined. But as the counsel for the respondent was engaged in another court and as there was no effective representation, the cross examination of PW1 could not be done. On the very next day, an application was filed requesting for reopening the case and to permit cross examination of PW1. The court dismissed that application and then proceeded to issue warrant of arrest. I feel one cannot attribute gross negligence or grave misconduct on the part of the writ petitioner because he had effectively represented before the court at least on the very next chance for recalling and cross examining of PW1. It has to be understood that sending a person to civil prison affects his right of liberty and therefore the court should have at least given an opportunity of cross examining him when it was asked and proper explanation was tendered for the non- appearance on the relevant date.

Therefore the order of the Principal Munsiff suffers from serious infirmity and it is set aside. The order of arrest is also set aside and the petition for reopening the evidence is allowed and the court below in consultation with the counsel for the decree holder may fix a date for appearance of PW1 so as to enable the respondent for cross examining him and thereafter permit the respondent to adduce evidence in support of his contentions.

Writ petition is allowed.

M.N.KRISHNAN, JUDGE

Cdp/-